

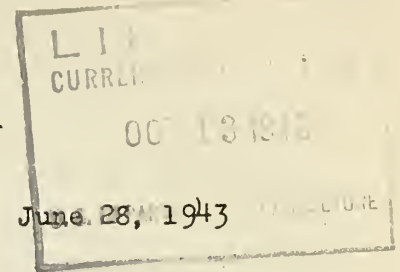
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WAR FOOD ADMINISTRATION  
Food Distribution Administration  
Washington 25, D. C.



PROCUREMENT MEMORANDUM NO. 1

To: Branch and Division Chiefs and Regional Administrators

From: R. W. Olmstead

Subject: Procedure for the Use of "Standard Contract Conditions"  
(Form FDA-474)

Effective July 1, 1943 the "Standard Contract Conditions" as set forth in form FDA-474, a copy of which is attached, shall govern all purchases, except purchases of meat and meat products. The provisions of Form FDA-474 supersede the "Conditions" on the reverse of Forms FDA-290, FDA-291 and FDA-292.

Copies of Form FDA-474 have been sent to all vendors doing business with this Administration to date. Additional copies may be obtained from the Administrative Services Division in Washington and from the Regional Offices.

Use with Contract and Offer Forms:

Hereafter the "Standard Contract Conditions" shall be made a part of every announcement and offer form for the purchase or processing of any commodity by FDA or FSCC (except Meat and Meat Products) and shall be accomplished by including in the announcement or offer form "'Standard Contract Conditions' (Form FDA-474) is incorporated herein by reference and is made a part hereof."

Schedule FSC-10, Meat and Meat Products Purchase Specifications, as amended, is made a part of all contracts for the purchase of Meat and Meat Products. This Schedule (FSC-10 as amended) will include among other items all conditions as set forth in "Standard Contract Conditions." The Livestock and Meats Branch may therefore continue to use Schedule FSC-10, as amended, in Meat and Meat Products contracts.

When Purchase Contract Forms FDA-290, FDA-291, and FDA-292 are used, the opening sentence should be revised to read as follows: "We the undersigned vendor, hereby offer to sell the below listed commodity to the \_\_\_\_\_, on the basis of the terms and conditions set forth in 'Standard Contract Conditions' (Form FDA-474), which is incorporated herein by reference and is made a part hereof."

Inapplicable Provisions:

Conditions which are inapplicable to a particular announcement or offer form may be eliminated by stating that "Item (s) No. \_\_\_\_\_ is (are) not applicable."

Special Notes on Items 6, 15, and 16:

Item 6--Carrying Charges. The Office of Price Administration has advised us that carrying charges, unless the applicable Office of Price Administration price regulation expressly permits, may not be allowed when such carrying charges would increase Office of Price Administration ceiling price.

Item 15--Notice of Overtime Law. Shall be included in contracts where the seller is the processor or manufacturer of the commodity but may be eliminated from contracts where the seller is a wholesaler or jobber.

Item 16--Minimum Wartime Workweek of 48 Hours. Shall be included in all contracts.

In any instance in which these conditions may be found inadequate, the announcement or offer form may vary the terms thereof or impose additional conditions.

Attachment

A handwritten signature in dark ink, appearing to read "Ralph W. Hunt". The signature is fluid and cursive, with the first name "Ralph" being more prominent.

Deputy Director

F-735

STANDARD CONTRACT CONDITIONS

1. Definitions.--As used herein.--(a) "Deliverable Time" means the first day of the period of delivery or the date of delivery, as specified in the contract. (b) "Time for Delivery" shall mean the tenth day following receipt of Notice to Deliver from the purchaser or the Deliverable Time, whichever is later. (c) "Late Delivery" means delivery after the Time for Delivery. (d) "Commodity" means the commodity or product sold and to be delivered under a contract.

2. Specifications.--The commodity shall meet the specifications prescribed by the contract and shall conform to the applicable provisions of the Federal Food, Drug, and Cosmetic Act, and amendments, regulations, and decisions pertaining thereto.

3. Inspection.--(a) The commodity must be inspected after the date of acceptance of the offer and prior to delivery. Such inspection shall be made after the seller's request therefor by the Food Distribution Administration of the War Food Administration, or by any person or agency designated by and under the supervision of that Administration. (b) If the seller shall request inspection of the commodity at least 10 days before the Deliverable Time, then the provisions of paragraph 7 hereof shall not apply to the delay, if any, occasioned by the failure to make inspection in sufficient time to permit delivery at time for delivery; otherwise the provisions of said paragraph shall apply to any such Late Delivery. (c) For the purposes of the contract, inspection shall not be deemed to be complete or the commodity deemed to be inspected until the inspection certificate has been issued by FDA as provided. (d) Unless otherwise provided in the offer (1) the cost of inspection, including the furnishing of samples, shall be borne by the seller, and (2) any chemical analysis required for such inspection shall be made in accordance with the Methods of the Association of Official Agricultural Chemists, in effect on the date such inspection is made.

4. Packaging.--The commodity shall be packaged in accordance with the requirements stipulated in the contract. All packages and containers shall be so constructed as to insure acceptance by common or other carrier for safe transportation for export shipment, or, if domestic shipment is indicated in the contract, for domestic shipment. Each container or package shall be marked as prescribed by the contract or as may be prescribed by purchaser on or before the date of issuance of the Notice to Deliver.

5. Delivery.--(a) The commodity shall be delivered in the manner (f.a.s., f.o.b., etc.) and at the point or points of delivery specified in the offer; unless otherwise specified, provided the Point or points of delivery shall be any place, at the option of the purchaser, in the city or cities named in the offer as the Point

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\*Supersedes "Conditions" on reverse of Purchase Contract Forms FDA-290, FDA-291, FDA-292 and any and all other contract condition forms.



of delivery. The Delivery shall be made at the Time for Delivery; Provided, however, that delivery shall not be made until after receipt of Notice to Deliver from the purchaser and the commodity has first been inspected and approved. (b) If delivery is made f.o.b. cars or trucks, the seller should load and brace such trucks to insure safe delivery to destination and in accordance with carrier's regulations.

6. Carrying Charge.--If the purchaser fails to issue Notice to Deliver by the date of delivery or the last day of the period of delivery specified in the contract, the seller shall be entitled to Carrying Charges at the rate specified in the contract, said Carrying Charges to accrue beginning with the sixth day after the "Time for Delivery" or the last day of the period of delivery. (This provision shall be applicable only as to those commodities and in those instances in which under maximum Price Regulations established by the Office of Price Administration such carrying charges may be added to the maximum sales price.)

7. Liquidated Damages.--(a) Late delivery by the seller will cause serious and substantial damages to the purchaser because of its urgent need for prompt delivery. Since it will be difficult if not impossible to prove the amount of such damages, the seller shall pay to the purchaser by way of compensation and not as penalty, liquidated damages at the rate set forth in the offer. Such damages are agreed to be a reasonable estimate of the probable actual damages: Provided, however, That if, upon written application of the seller, the purchaser shall in its sole discretion determine that the Late Delivery was the result of an unforeseeable cause or causes, without any fault or negligence of the seller contributing thereto, the seller shall not be required to pay any liquidated damages. The determination of the purchaser shall be final and conclusive upon the parties. (b) In the event of a total failure to deliver in whole or in part, seller shall pay liquidated damages at the rate specified in the offer in the same manner as for Late Delivery, and in addition thereto purchaser shall be entitled to recover the difference between the cost of replacement of the commodity and the contract price, calculated as of the date when the total failure to deliver takes place. A total failure to deliver within the meaning of this subparagraph shall be deemed to have taken place (1) if subsequent to the Time for Delivery the seller shall declare his intention not to deliver, or (2) if subsequent to the Time for Delivery and before delivery has been tendered purchaser shall declare its intention not to accept. (c) The failure of the offer to specify a rate of liquidated damages shall not be deemed a waiver by purchaser of any damage it may suffer in the event of any breach on the part of the seller. The measure of damages and remedies provided for herein shall be in addition to and not in lieu of the remedies provided by law.

8. Performance Bond.--Unless otherwise specified in the contract, the seller shall furnish the purchaser, within ten (10) days after the acceptance of the offer, an acceptable surety bond conditioned on his faithful performance of each and all of the provisions of the contract, or in lieu of such bond a certified check or a cashier's check. Said bond or check shall be payable to the purchaser and shall be in such amount as the purchaser shall prescribe, which will be not more than the percentage, set forth in the offer, of the amount for which the offer is accepted, but in no event less than one thousand dollars (\$1,000).

9. Price Ceiling Warranty.--The seller represents and warrants that the price or prices of the commodity do not exceed any existing applicable maximum price or

prices established by the Office of Price Administration. In the event the price or prices of the commodity, at the making of delivery thereof, exceed the then applicable maximum price or prices, the seller shall be entitled only to the amount of such established maximum and shall refund to the purchaser all moneys received in payment for such commodity in excess of such established maximum.

10. Payment.--Payment to the seller will be made as soon as practicable after submission by the seller of a correct claim or claims for any delivery and payment by the purchaser will be contingent upon compliance with conditions set forth in the contract.

11. Changes and Extras.--No changes in the terms and conditions of the contract shall be allowed unless the same have been ordered in writing by the purchaser and the price stated in such order.

12. Discrimination.--(a) The seller in performing the work required by this contract shall not discriminate against any person or employee because of race, creed, color, or national origin. (b) The seller agrees that the provisions of paragraph (a) above will also be inserted in all of his subcontracts. For the purpose of this article, a subcontract is defined as any contract entered into by the contractor with any individual, partnership association, corporation, estate, or trust, or other business enterprise or legal entity, for a specific part of the work to be performed in connection with the commodity furnished under the contract: Provided, however, That a contract for the furnishing of standard or commercial articles or raw materials shall not be considered as a subcontract.

13. Contingent Fees.--The seller warrants that he has not employed any person to solicit or secure this contract upon any agreement for a commission, percentage, brokerage, or contingent fee. Breach of this warranty shall give the purchaser the right to annul the contract, or, in its discretion, to deduct from the contract price or consideration the amount of such commission, percentage, brokerage, or contingent fees. This warranty shall not apply to commissions payable by contractors upon contracts or sales secured or made through bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business.

14. Assignment of Claims.--No claims against purchaser may be assigned except in accordance with the Assignment of Claims Act of 1940. (Public, No. 311, 76th Cong., Approved Oct. 9, 1940.)

15. Notice of Overtime Law.--All applicable provisions of Executive Order 9240, signed by the President on September 9, 1942 (7F. R. 7159), as amended by Executive Order 9248, signed by the President on September 17, 1942 (7 F. R. 7419) relating to overtime compensation shall be observed.

16. Minimum Wartime Workweek of 48 Hours.--Attention is invited to Executive Order No. 9301, February 9, 1943, (8 F. R. 1825) and such applicable policies, directives,



and regulations as have been or may hereafter be issued by the War Manpower Commission. Questions concerning the interpretation or the application of the orders or regulations are to be taken up with the regional or area manpower directors.

17. Telegraphic Notice of Shipment or Delivery.--Immediately upon shipment (THE DAY THE SHIPMENT LEAVES CONSIGNOR'S PLANT) the seller shall notify the Food Distribution Administration by COLLECT TELEGRAM, at the location shown on the Notice to Deliver, that such shipment or delivery has been made. STATE SEPARATELY FOR EACH CONTRACT and for EACH CARLOAD or lot delivered the following: order number, including symbol and sub-number;-commodity;-type, grade, or style;-cut, color, weight range, etc. as applicable for the commodity;-number of packages and contents of packages expressed in units as contracted for;-true net weight of commodity;-gross weight (shipping weight);-true net weight of commodity;-gross weight (shipping weight);-car initials and number;-date shipped, consignee, destination, delivering carrier. This information is necessary for the purchaser to arrange for proper reception and handling of the commodities upon arrival at destination; therefore, seller shall pay to the purchaser any demurrage, re-icing, handling, damage, or other costs incurred by the purchaser as a result of seller's failure to send such notice.

18. Rationed Commodities.--On commodities rationed by the Office of Price Administration, ration currency will be transmitted to the seller promptly upon receipt by the purchaser of the required ration currency invoice(s).

19. Officials not to Benefit.--No Member of or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of the contract or to any benefit that may arise therefrom, but this provision shall not be construed to extend to the contract if made with a corporation for its general benefit. (Sec. 3741, Revised Statutes, and Secs. 114 - 116, Act of Mar. 4, 1909. However, See Public No. 381, 75th Cong., approved August 26, 1937.)